Supreme Court, U.S.
FILED

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

SUCCESSION OF FABIOUS M. RICORD, JR.
Petitioner,

versus

ENERGY TRANSPORTATION COMPANY
Respondent

Petition for Writ of Certiorari To The
Court of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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59 pp

QUESTION PRESENTED FOR REVIEW

1. Does the United States District Court for the Eastern District of Louisiana have personal jurisdiction over a New York based shipping company in a personal injury and breach of contract suit, where the shipping company hired the plaintiff employee in New Orleans through an intermediary maritime union, when the shipping company knew that crew members were being hired in New Orleans, and when a Louisiana appellate court has held that Louisiana's long-arm statute confers jurisdiction over foreign corporations who hire employees through intermediaries?

PARTIES

Succession of Fabious M. Ricord, Jr., Petitioner

Energy Transportation Company, Respondent

TABLE OF CONTENTS

Question Presented for Review i

Parties ii

Table of Authorities iv

Reports of Opinions vi

Grounds for Jurisdiction vii

Relevant Statutes viii

Statement of the Case 1

Reasons for Allowance of Writ 2

Argument 3

Conclusion 11

Appendix

A. Fifth Circuit Opinion A-1
B. District Court Opinion A-6
C. Petition for Rehearing A-17
D. Crew Information Forms A-18
E. Peth Affidavit A-33
F. Nielsen Affidavits A-34

TABLE OF AUTHORITIES

CASES:

Asahi Metal Industry Co., Ltd. v. Superior Court of California, 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987) 3,4,5

Bass v. Energy Transportation Corporation, 787 F. Supp. 530 (D.Md. 1992) 6

Boit v. Gar-Tec Products, Inc., 967 F.2d 671 (1st Cir. 1992) 5,7

Bullion v. Gillespie, 895 F.2d 213 (5th Cir. 1990) 5,6,7

Burger King Corporation v. Rudzewicz, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985) 3,4

Dakota Industries, Inc. v. Dakota Sportswear, Inc., 946 F.2d 1384 (8th Cir. 1991) 5

Dalton v. R & W Marine, Inc., 897 F.2d 1359 (5th Cir. 1990) 3

de Reyes v. Marine Management and Consulting, Ltd., 586 So.2d 103 (La. 1991) 3

Exxon Company, U.S.A., a Division of Exxon Corporation v. Banque de Paris et des Pays-Bas, 889 F.2d 674 (5th Cir.), cert. denied 496 U.S. 943, 110 S.Ct. 3230, 110 L.Ed.2d 676 (1990) 8,10

Fabious M. Micord, Jr. v. Energy Transportation Co., CA-92-3797-A, E.D.La. 1993 vi

TABLE OF AUTHORITIES (cont'd)

Fabious M. Ricord v. Energy Transportation Co., 93-3798 (5th Cir. 1994) vi

Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984) 3

International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945) 3,4,5

Jones v. Petty-Ray Geophysical Geosource, Inc., 954 F.2d 1061 (5th Cir.), *cert. denied*, 113 S.Ct. 193 (1992) 3

Marullo v. Zuppardo, 454 So.2d 268 (La.App. 4 Cir. 1984) writ denied 458 So.2d 477 9,10

Theunissen v. Matthews, 935 F.2d 1454 (6th Cir. 1991) 5

West v. American Telephone & Telegraph Co., 311 U.S. 223, 61 S.Ct. 179, 85 L.Ed. 139 (1940) 8

STATUTES:

28 U.S.C. sec. 1254 (1) vii

Rules of the Supreme Court, Rule 10 2

Louisiana Revised Statute 13:3201 ..... viii,3,9

REPORTS OF OPINIONS

Fabious M. Ricord, Jr., v. Energy Transportation Co., CA-92-3797-A, E.D.La. 1993. Not reported in official reporter.

Fabious M. Ricord v. Energy Transportation Company, 93-3798 (5th Cir. 1994). Not reported in official reporter.

GROUNDS FOR JURISDICTION

The ruling below was rendered by the Court of Appeals for the Fifth Circuit on May 17, 1994. Plaintiffs' Petition for Rehearing was denied on June 16, 1994. (A-17). This Court has jurisdiction to review that ruling by writ of certiorari pursuant to 28 U.S.C. sec. 1254 (1).

RELEVANT STATUTES

Louisiana Revised Statute 13:3201

Section 3201. Personal jurisdiction over nonresidents

A. A court may exercise personal jurisdiction over a nonresident, who acts directly or by an agent, as to a cause of action arising from any one of the following activities performed by the nonresident:

(1) Transacting any business in this state.

(2) Contracting to supply services or things in this state.

(3) Causing injury or damage by an offense or quasi offense committed through an act or omission in this state.

(4) Causing injury or damage in this state by an offense or quasi offense committed through an act or omission outside of this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives revenue from goods used or consumed or services rendered in this state.

(5) Having an interest in, using or possessing a real right on immovable property in this state.

(6) Non-support of a child, parent, or spouse or a former spouse domiciled in this state to whom an obligation of support is owed and with whom the nonresident formerly resided in this state.

(7) Parentage and support of a child who was conceived by the nonresident while he resided in or was in this state.

(8) Manufacturing of a product or component thereof which caused damage or injury in this state, if at the time of placing the product into the stream of commerce, the manufacturer could have foreseen, realized, expected, or anticipated that the product may eventually be found in this state by reason of its nature and the manufacturer's marketing practices.

B, In addition to the provisions of Subsection A, a court of this state may exercise personal jurisdiction over a nonresident on any basis consistent with the constitution of this state and of the Constitution of the United States.

STATEMENT OF THE CASE

Energy Transportation Company ("ETC") is a foreign corporation incorporated under the laws of the State of Delaware and with a principal place of business in New York which operates and manages liquid natural gas carriers sailing between Indonesia and Japan. To staff its ships, ETC relies on the services of the Seafarer's International Union ("SIU") which is an international organization with hiring halls located in port cities throughout the United States. When ETC has a need for seamen, it contacts the SIU Manpower Office in Maryland which then coordinates the engagement of seamen through SIU hiring halls. It was through this hiring process that ETC engaged Ricord for employment in New Orleans, Louisiana, on fifteen occasions between 1981 through 1991, according to ETC's own crew information cards. (Individual Crew Information Forms, A-18-32).

On January 5, 1991, Mr. Ricord underwent surgical amputation of his left long middle finger as a result of a medical condition caused by a continuing course of negligent conduct by ETC from February 1989, through November 28, 1989, while Mr. Ricord served on ETC's vessel. In December 1991, ETC terminated Mr. Ricord's employment without cause. Mr. Ricord filed this suit on November 17, 1992, for damages alleging three causes action: 1) Jones Act claim; 2) unseaworthiness; and 3) breach of contract. Mr. Ricord died on April 1, 1993, and his succession was substituted as plaintiff in the pending suit.

The district court granted ETC's motion to dismiss for lack of personal jurisdiction in a Judgment entered November 3, 1993. The Honorable Judge Charles Schwartz, Jr. concluded ETc's only contact with Louisiana was that it utilized SIU's Louisiana hiring hall to fill seaman positions. Judge Schwartz further concluded that ETc's crew information cards incorrectly

reflected Mr. Ricord's port of engagement as New Orleans. Finding that ETc's contacts with Louisiana were fortuitous and not purposeful nor systematic, the district court dismissed Mr. Ricord's suit for lack of personal jurisdiction. (District Court Opinion, A-6).

The Court of Appeals for the Fifth Circuit affirmed the judgment of the district court concluding Mr. Ricord was not engaged for employment in Louisiana as indicated on ETC's crew information cards but rather was hired by ETC when he signed his shipping papers aboard the vessel to which he was assigned. (Fifth Circuit Opinion, A- 1). Mr. Ricord's Petition for Rehearing was denied on June 16, 1994. (Petition for Rehearing, A-17).

REASONS FOR ALLOWANCE OF WRIT

A writ of certiorari should be granted by the Court, for, as set forth in Rule 10 of the Rules of the Supreme Court:

1) The United States Court of Appeals for the Fifth Circuit has so far departed from the accepted and usual course of judicial proceedings, and sanctioned such a departure by the District Court for the Eastern District of Louisiana, as to call for this Court's exercise of its supervisory power.

2) The United States Court of Appeals for the Fifth Circuit has decided an important question of federal law which has not been, but should be settled by this Court, and has decided a federal question in a way that conflicts with applicable decisions of this Court.

ARGUMENT

For a federal district court to exercise personal jurisdiction over nonresident defendants served out of state, the nonresident must be amenable to service of process under the forum state's long-arm statute which is an issue that is governed by the law of the forum state. *Jones v. Petty-Ray Geophysical Geosource, Inc.*, 954 F.2d 1061, 1067 (5th Cir.), *cert. denied*, 113 S.Ct. 193 (1992). In the present case, the issue is whether ETC, a nonresident defendant, is amenable to service of process under Louisiana's long-arm statute.

The Louisiana long-arm statute, provides for the exercise of personal jurisdiction over a nonresident on any basis consistent with the United States Constitution. LSA R.S. 13:3201(B). Because Louisiana's long-arm statute permits service to the full extent of due process, the statutory and constitutional inquiries are the same. *Dalton v. R & W Marine, Inc.*, 897 F.2d 1359, 1361 (5th Cir. 1990). Constitutional due process requires that in order to subject a nonresident defendant to a court's jurisdiction, the defendant must have certain minimum contacts with the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *de Reyes v. Marine Management and Consulting, Ltd.*, 586 So.2d 103, 105 (La. 1991), citing *International Shoe Co., v. Washington*, 326 U.S. 310, 320, 66 S.Ct. 154, 160, 90 L.Ed. 95 (1945); *Asahi Metal Industry Co., Ltd. v. Superior Court of California*, 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed. 2d 92 (1987); *Burger King Corporation v. Rudzewicz*, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984).

The court engages in a two part minimum contacts/ fairness analysis to determine whether maintenance of the suit

based on personal jurisdiction comports with due process. Under this two step inquiry, the district court must first consider whether the nonresident defendant purposefully established minimum contacts with the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice and second whether requiring the defendant to litigate in the forum state would be unfair. *Asahi Metal Industry Co., Ltd.*, 480 U.S. 102, 107 S.Ct. at 1029, 94 L.Ed.2d 92; *Burger King Corporation*, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed. 2d 528; *International Shoe Co.*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95.

In the present case, the courts below concluded ETC did not have minimum contacts with Louisiana and thus assertion of jurisdiction over ETC would not be consistent with due process. The court of appeals erred in affirming the judgment of the district court dismissing Mr. Ricord's suit for lack of personal jurisdiction on two separate grounds. The courts below erred: 1) in ruling Mr. Ricord did not meet his burden of establishing a prima facie case of personal jurisdiction; and 2) in failing to apply Louisiana's long-arm statute as interpreted by the state's courts.

I. THE COURTS BELOW ERRED IN RULING MR. RICORD DID NOT MEET HIS BURDEN OF ESTABLISHING A PRIMA FACIE CASE OF PERSONAL JURISDICTION.

The party who seeks to invoke the jurisdiction of the district court bears the burden of establishing contacts by the nonresident defendant sufficient to invoke the jurisdiction of the court. However, the party seeking to invoke the court's jurisdiction need only present facts sufficient to constitute a prima facie case of personal jurisdiction and is not held to the higher

evidentiary burden of proof by a preponderance of the evidence. For determining whether a prima facie case for personal jurisdiction exists, all conflicting facts must be resolved in the plaintiff's favor. *Boit v. Gar-Tec Products, Inc.*, 967 F.2d 671, 675 (1st Cir. 1992). *Theunissen v. Matthews*, 935 F.2d 1454, 1458 (6th Cir. 1991); *Dakota Industries, Inc. v. Dakota Sportswear, Inc.*, 946 F.2d 1384, 1387 (8th Cir. 1991); *Bullion v. Gillespie*, 895 F.2d 213, 216-217 (5th Cir. 1990). In ruling on a 12(b)(2) motion to dismiss, the court does not weigh the controverted assertions of the party seeking dismissal. The purpose of this rule is to prevent non-resident defendants from regularly avoiding personal jurisdiction simply by filing an affidavit denying all jurisdictional facts. *Theunissen*, 935 F.2d at 1459. Indeed, the district court commits reversible error when factual conflicts are not resolved in favor of the plaintiff. *Bullion*, 895 F.2d at 217.

To determine whether a nonresident defendant has sufficient contacts with the forum state to support the exercise of jurisdiction, the relevant inquiry is whether the defendant purposefully established minimum contacts in the forum state. *Asahi Metal Industry Co.*, 480 U.S. at 108-109 *quoting International Shoe Co.*, 326 U.S. at 316.

In the present case, the courts below were confronted with conflicting facts relating to whether ETC purposefully established minimum contacts in Louisiana. In particular, the contested issue was whether Mr. Ricord was engaged for employment as a seaman by ETC in Louisiana. Rather than resolving such conflicts in Mr. Ricord's favor, the courts below erred by weighing the evidence and dismissing many of his factual assertions that were at odds with competing assertions made by ETC.

Both parties presented evidence relating to ETC's hiring practices. The parties agree that the SIU is an international

organization with hiring halls located in port cities throughout the United States and ETC has a collective bargaining agreement with the SIU for the express purpose of filling positions on board its vessels.[1]

As evidence that ETC hired seamen in Louisiana, Mr. Ricord presented the affidavit of Carl Peth, Director of the Manpower Office of the SIU, stating that "during the past five years, the SIU has filled jobs on board ETC vessels at its hiring hall in New Orleans, Louisiana. (Peth Affidavit, A-33). ETC presented the affidavit of Steven M. Nielsen, Personnel Manager of ETC, stating "ETC does not hire seamen through the SIU Hall in New Orleans, Louisiana". Nielsen states seamen do not become employed by ETC until the seaman signs shipping articles constituting an employment contract at the time of boarding an ETC vessel. (Nielsen Affidavit, A-34).

When confronted with conflicting affidavits, the district court must resolve all disputes in favor of the plaintiff. *Bullion,* 895 F.2d at 217. In the present case, the courts below refused to resolve the factual dispute in favor of the plaintiff, but rather dismissed plaintiff's affidavit thus enabling ETC to avoid personal jurisdiction simply by filing an affidavit denying all jurisdictional facts. The courts below committed reversible error by not resolving factual conflicts in favor of the Mr. Ricord. *Bullion, Id* at 217.

Also in support of his contention that he was hired by ETC in Louisiana, Mr. Ricord presented the court with his

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[1] This case is factually distinguishable, but legally indistinguishable, from *Bass v. Energy Transportation Corporation,* 787 F.Supp. 530 (D.Md. 1992), where jurisdiction over ETC was maintained due to SIU contacts there.

personnel file from ETC which contained Individual Crew Information Forms. (A-18-32). As documented on his Individual Crew Information Forms, ETC hires the seamen referred to it from SIU and "engages" such seamen at a port designated by ETC as "port engaged". ETC engaged Ricord for employment in New Orleans, Louisiana on fifteen occasions between 1981 and 1991. On each occasion, ETC completed an Individual Crew Information Form in which the "port engaged" is listed as New Orleans, Louisiana[2]. A plain reading of the phrase "port engaged" is the port in which an employee is hired, employed, or retained. As indicated by ETC's own records kept in Ricord's personnel file, Ricord was engaged, or hired, by ETC at the port of New Orleans, Louisiana. The district court considered it wholly irrelevant that plaintiff's crew information cards reflect his "port of engagement" as New Orleans, and instead, inexplicably deemed ETC's own records as "incorrect". Indeed, the district court concluded that ETC's crew information cards incorrectly reflected Mr. Ricord's port of engagement as New Orleans.(District Court Opinion, A-6).

In determining whether plaintiff has made a prima facie showing of personal jurisdiction, the district court is not acting as a factfinder but rather must accept all properly supported proffers of evidence by the plaintiff as true. *Bullion,* 895 F.2d at 217; *see also Boit v. Gar-Tec Products, Inc.*, 967 F.2d at, 675. The district court erred in drawing the conclusion that ETC's personnel records incorrectly reflected his "port of engagement" as New Orleans. Such factual determinations were inappropriate at the pre-trial stage of the proceeding when Mr. Ricord only needed to establish a prima facie case of personal jurisdiction.

Mr. Ricord presented further evidence of ETC's contacts with Louisiana. Specifically, evidence was presented that ETC

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2 On the cards, "MSY" is the code for New Orleans.

retains a New Orleans physician for examining seamen for claims, makes maintenance and cure payments to Louisiana seamen, and mails paychecks to ETC employees to Louisiana. Although such facts were not contested by ETC, the courts below dismissed them as irrelevant. Such dismissal of evidence proffered by Mr. Ricord constitutes reversible error.

II. THE COURTS BELOW ERRED IN FAILING TO APPLY LOUISIANA'S LONG-ARM STATUTE AS INTERPRETED BY THE STATE'S COURTS.

In *West v. American Telephone & Telegraph Co.*, 311 U.S. 223, 237-38, 61 S.Ct. 179, 183-84, 85 L.Ed. 139 (1940), this Court held that federal courts are bound to follow precedent established by state intermediate courts of appeal:

> Where an intermediate appellate state court rests its considered judgment upon the rule of law which it announces, that is a datum for ascertaining state law which is not to be disregarded by a federal court unless it is convinced by other persuasive data that the highest court of the state would decide otherwise.

West v. American Telephone & Telegraph Co., 311 U.S. 223, 237-38, 61 S.Ct. 179, 183-84, 85 L.Ed. 139 (1940).

Relying on *West*, the Fifth Circuit has held that there is a working presumption that state intermediate appellate court decisions represent accurate statements of state law. *Exxon Company, U.S.A., a Division of Exxon Corporation v. Banque de Paris et des Pays-Bas*, 889 F.2d 674 (5th Cir.), cert. denied 496 U.S. 943, 110 S.Ct. 3230, 110 L.Ed.2d 676 (1990).

The Louisiana Fourth Circuit Court of Appeals ruled that a nonresident defendant acting either directly or through an agent in the forum would be subjected to the court's jurisdiction. *Marullo v. Zuppardo,* 454 So.2d 268, 270 (La.App. 4 Cir. 1984) writ denied 458 So. 2d 477. Noting that the broad purpose of the long-arm statute is to assert constitutionally permissible jurisdiction, the *Marullo* court explained the rationale for asserting jurisdiction over a nonresident acting either directly, or through an agent, in the forum:

> To suggest that a Nevada corporate entity (defendant) that solicits Louisiana residents in Louisiana to accept free hotel rooms in Nevada and free transportation to Nevada, in order to induce them to go to Nevada to gamble, is not transacting business or otherwise acting in Louisiana because it solicits through an "independent contractor" is to ignore reality. La. R.S. 13:3201 does not ignore reality. It asserts jurisdiction to decide claims arising out of nonresidents' acting "directly or by an agent" in specified ways. The only question is whether indeed the nonresident has acted in one of those specified ways' that the nonresident did so through an "independent contractor" does not defeat jurisdiction *if otherwise asserted by the statute.*

Marullo, 454 So.2d at 270.

When ETC used the New Orleans SIU hiring hall as an intermediary in hiring seamen for duty on its vessels, it was conducting business in the forum. Applying the precedent established in *Marullo*, ETC is thus subject to the jurisdiction of a Louisiana court.

There is no reason to believe the Louisiana Supreme Court would decide *Marullo* differently. In fact the Louisiana Supreme Court denied writs in *Marullo* indicating its approval of the intermediate appellate court's statement of the law. *Marullo,* 454 So.2d 268, writ denied 456 So.2d 477.

ETC employed seamen in Louisiana through its intermediary, the SIU who acted as a referral source. ETC's use of the SIU for referrals, however, does not automatically grant it immunity from suit in Louisiana. ETC, acting through its agent, the SIU, hired seamen in Louisiana and does have sufficient contacts with the forum such that the district court must exercise personal jurisdiction.

The Fifth Circuit Court of Appeals concluded that *Marullo* was not controlling in the present case because, even if SIU was acting as ETC's agent, jurisdiction could not be extended to every location that the SIU contacted. Such a conclusion ignores the Fifth Circuit's own rule that a federal court is bound to follow decisions of the state's intermediate appellate courts. *Exxon Company, U.S.A., a Division of Exxon Corporation,* 889 F.2d at 675. The courts below were bound to follow the decision of the Louisiana Fourth Circuit Court of Appeals as set forth in *Marullo. Marullo* unequivocally ruled that under the Louisiana long-arm statute, a nonresident defendant acting either directly or through an agent in the forum would be subjected to the court's jurisdiction. By failing to follow the decision in *Marullo*, the Fifth Circuit Court of Appeals committed reversible error.

CONCLUSION

The Fifth Circuit clearly erred in:

1. Ruling Mr. Ricord did not meet his burden of establishing a prima facie case of personal jurisdiction.

2. Failing to apply Louisiana's long-arm statute as interpreted by the state's courts.

Accordingly, for the reasons set forth herein, the Court is urged to grant a writ of certiorari, and thereafter reverse the ruling below, and remand the case for trial.

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U.S. COURT OF APPEALS
FILED May 17, 1994
Charles R. Fulbruge, III, Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3798
Summary Calendar

FABIOUS M. RICORD,
(Succession of Fabious M. Ricord, Jr.,
substituted as plaintiff in place of
Fabious M. Ricord, Jr.

Plaintiff-Appellant,

versus

ENERGY TRANSPORTATION COMPANY,
Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-92-3797-A)

Before REAVLEY, HIGGINBOTHAM and EMILIO M. GARZA, Circuit Judges.
PER CURAIM:*

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

BACKGROUND

Appellant Fabious Ricord instituted this suit against Energy Transportation Corporation ("ETC") in the Eastern District of Louisiana, alleging admiralty and maritime claims for an injury he obtained while working as a crewmember aboard ETC vessels. [1] The district court granted ETC's motion to dismiss for lack of personal jurisdiction. We affirm.

ETC is a closely held corporation incorporated under the laws of Delaware. Its principal place of business is New York, New York. ETC is not authorized to do business in Louisiana and does not advertise or solicit business in Louisiana. ETC's vessels were operating in Asian waters at the time of the alleged injury; it is undisputed that they did not travel to or from Louisiana.

ETC hires all crew members through the Manpower Coordinator at Seafarers International Union Headquarters ("SIU") located in Piney Point, Maryland. Ricord was hired to work as an unlicensed crew member on ETC vessels through the SIU on fifteen different occasions between 1981 and 1991.[2] When ETC needed seamen, it would contact the SIU in Maryland. Ricord was hired by this process when the SIU, to fill the hiring needs of ETC, contacted Ricord through a hiring hall in Louisiana. Ricord's contract of employment with ETC consisted of shipping articles which were signed and executed in Japan; no

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[1] Ricord died in 1993, and his succession was substituted as a plaintiff in this suit.

[2] Article III, I of ETC's collective bargaining agreement with the SIU provides: "The union agrees to furnish the company with qualified, physically fit unlicensed personnel having the required rating, when and where they are required by the company."

contract of employment was signed or negotiated in Louisiana. All travel arrangements for seamen such as Ricord were made through ETC's travel agent in New York. The only other peripheral "contacts" ETC had with Louisiana are as follows: 1) ETC pays the costs incurred by hired seamen in Louisiana when they are examined by a doctor there for claims and, 2) ETC employees' paychecks are mailed to Louisiana upon the employees' requests. Ricord argues that this creates sufficient contacts with Louisiana to confer personal jurisdiction. We agree with the district court that these limited "contacts" are insufficient.

DISCUSSION

The burden of establishing the district court's personal jurisdiction over ETC rests with Ricord. *Jones v. Petty-Ray Geophysical Geosource, Inc.*, 954 F.2s 1061, 1067 (5th Cir.), *cert. denied*, 113 S.Ct. 193 (1992). Only a prima facie case must be established and any genuine material conflicts must be resolved in Ricord's favor. *Id.*

As we stated in Jones:

> two preconditions generally must be satisfied to allow personal jurisdiction over nonresident defendants served out of state: (1) the nonresident must be amenable to service of process under the forum state's long-arm statute (an issue that is governed by the law of the forum state); and (2) if the state jurisdictional test is met, the assertion of jurisdiction over the non-resident must be consistent with the Fourteenth Amendment due process clause.
> *Id.*

The Louisiana Long-Arm Statute, as amended, extends long-arm jurisdiction of Louisiana courts to the limits allowed by due process. LA. REV. STAT. ANN. §13:3201(B) (West 1991). Accordingly, we need only consider whether personal jurisdiction over ETC satisfies federal constitutional standards. The "constitutional touchstone" of the Due Process Clause requires that the defendant purposefully established minimum contacts in the forum state so that maintenance of the suit does not offend "traditional notions of fair play and substantial justice." *Asahi Metal Indus. Co. v. Superior Court of Cal.*, 107 S.Ct. 1026, 1030, 1033 (1987) (citations omitted). Because Ricord's cause of action did not arise out of or relate to ETC's activities in Louisiana in order to meet specific jurisdiction, the question is whether general jurisdiction exists. *See Helicopteros Nacionales De Colombia v. Hall,* 104 S.Ct. 1868, 1872-73 (1984).

To satisfy general jurisdiction, ETC's contacts with Louisiana must be "continuous and systematic." Id. The fact that injured ETC seamen occasionally are given medical services by Louisiana doctors who are paid by ETC, and that employees are permitted to have their paychecks sent to Louisiana cannot be deemed the "continuous and systematic" contacts by which ETC would expect to submit to Louisiana jurisdiction. The crew information card proffered by Ricord, which states that Ricord's "port engaged" was New Orleans, also does not demonstrate sufficient contact with Louisiana. According to the personnel manager of ETC, "port engaged" refers only to the location in the United States from which the hired seamen, who are initially contacted through the SIU headquarters in Maryland, departs for the vessel to travel to Japan. In short, employment is offered to SIU union members by the SIU manpower pool in Maryland, and seamen are then offered to ETC. For all practical purposes, Ricord was located through the union in Maryland and was

"hired" when he signed his shipping papers in Japan; the fact that he embarked from Louisiana is not significant.

Ricord argues that according to Louisiana law as set forth in *Marullo v. Zuppardo,* 454 So.2d 268, 270 (La. Ct. App. 1984), a nonresident defendant acting directly through an agent is subject to personal jurisdiction. But *Marullo* is distinguishable from the present case. Even if the union was an "agent" or contractor of ETC, ETC only requested seamen through the Maryland location and did not direct the union to achieve a purpose in Louisiana. That personal jurisdiction in Maryland might exist is arguable,[3] but jurisdiction cannot be extended to every location that the SIU contacted from Maryland, without any involvement on the part of ETC.

AFFIRMED.

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[3] *See Bass v. Energy Transp. Corp.*, 787 F.Supp. 530, 536-37 (D.Md. 1992) (finding personal jurisdiction existed over ETC in Maryland because SIU trained, brokered, and consistently had contact with ETC employees in Maryland).

FILED: NOV. 3, 1993
3:35 P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FABIOUS M. RICORD, JR.	CIVIL ACTION
VERSUS	NO. 92-3797
ENERGY TRANSPORTATION CO.	SECTION "A"

JUDGMENT

Considering the written Order of the Court on file herein, accordingly;

IT IS ORDERED, ADJUDGED, AND DECREED, that there be judgment in favor of defendant Energy Transportation Co. and against plaintiff Succession of Fabious M. Ricord, Jr., dismissing without prejudice the plaintiff's claims.

New Orleans, Louisiana this 3rd day of November, 1993.

[s]_____
LORETTA G. WHYTE, CLERK

APPROVED AS TO FORM:

[s]_____
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FABIOUS M. RICORD, JR.	CIVIL ACTION
VERSUS	NO. 92-3797
ENERGY TRANSPORTATION CO.	SECTION "A"

Before the Court is defendant Energy Transportation Co. ("ETC's") Motion to Dismiss for Lack of Personal Jurisdiction. Plaintiff, the Succession of Fabious M. Ricord, Jr. ("Ricord") filed formal opposition. The matter was set for oral hearing on October 13, 1993 but was submitted on the briefs on October 29, 1993. Considering all of the submissions of the parties, and for the reasons hereinafter stated, the Court grants ETC's Motion to Dismiss for Lack of Personal Jurisdiction.

BACKGROUND:

Ricord brought this admiralty and maritime suit pursuant to the Jones Act, 46 U.S.C. §688 and the general maritime law against ETC for injuries he sustained while serving as a crew member aboard several vessels owned and operated by ETC in Asian waters. Ricord died on April 1, 1993, and his succession was substituted as the proper party plaintiff in this action. At the time of the alleged injuries, plaintiff was stationed aboard the defendant's vessels including the LNG-CAPRICORN and the LNG-LEO which were operating in Asian waters at all pertinent times.

ETC operates and manages eight liquid natural gas carriers, each of which sails exclusively between Indonesia and Japan. It is undisputed that none of the defendant's vessels on

which the plaintiff was allegedly injured travel to or from or anywhere near Louisiana waters.[1]

ETC is a closely held corporation incorporated under the laws of the state of Delaware and its principal place of business is New York, New York. It has no Louisiana resident shareholders. ETC has and has never had any offices located in the state of Louisiana or any state other than New York and it has no agent to accept service of process in Louisiana. It is further undisputed that ETC has no sales representatives, employees or agents in Louisiana, owns no real or personal property in Louisiana, and has never been assessed or paid taxes in Louisiana. ETC is not authorized to do business and has never sought authorization to do business in the State of Louisiana.[2]

ETC does not solicit or advertise for business or any other purpose in Louisiana and has never placed employment advertisements or conducted employee searches in Louisiana. Instead, ETC hires all crew members through the Manpower Coordinator at Seafarers International Union ("SIU") Headquarters located in Piney Point, Maryland. It is undisputed that ETC did not travel to Louisiana and/or recruit the plaintiff or any other employees, nor did it negotiate or finalize any employment contracts in Louisiana.

Plaintiff was hired to work as an unlicensed crew member on the defendant's vessels pursuant to Article 3, Section 1 of ETC's collective bargaining agreement with SIU which provides:

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[1] Affidavit of Kendall G. Chen (ETC Exhibit "1").

[2] *Id.*

> The union agrees to furnish the company with qualified, physically fit, unlicensed personnel having the required rating, when and where they are required by the company (ETC).[3]

ETC's Marine Personnel Manager Steven Nielsen explained the hiring procedure routinely employed by ETC pursuant to its collective bargaining agreement with SIU as follows:

> About 30 days before scheduled replacement in Japan of unlicensed SIU seaman aboard ETC vessels, I call the so-called "manpower pool" at the SIU Piney Point, Maryland, plaintiff's union's national headquarters. At that time, I identify the ratings needed, e.g., two able-bodied seamen, one ordinary seaman, and one steward's assistant. I also give the manpower pool the ship's name, the port in Japan where the vessel is expected about a month hence, and the approximate date. The manpower pool at Piney Point is, for all practical purposes a lady whose name is Carol Johnson. It is my understanding that Ms. Johnson calls SIU seaman to solicit their willingness to accept assignment; and that who is called on a particular occasion is a matter of union decision. After, to my understanding, these calls are made, in the usual case less than one week later, Ms. Johnson calls back with name and rating. This was done in this case. Plaintiff, Fabious M. Ricord, Jr. was designated by the union; and ETC did not object to that designation.

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[3] See Exhibit "A" to Neilsen Affidavit.

By union contract, ETC is obliged to provide transportation for SIU seaman from the United States to Japan. Since I was employed by ETC in April, 1984, this travel agent has done business under the name VTS Travel Enterprises, Inc./ Woodside. The travel agent's offices are at 880 Third Avenue, New York, New York. VTS Travel arranges the transportation for SIU replacements. It is they, and not ETC Marine Personnel, which contact the replacement SIU seaman regarding travel to Japan.

...A special endorsement, or LNG "ticket" is needed to serve on ETC vessels; and frequently the first occasion on which an SIU seaman sales for us is soon after he or she obtains this endorsement after a period of schooling at the SIU's Harry Lundberg School of seamanship, which is also located in Piney Point. This typically is the first and last direct contact between ETC and the SIU unlicensed personnel, who serve on our vessels. To my recollection, I have never spoken to plaintiff Fabious M. Ricord, Jr. Marine Personnel never calls SIU seaman for purposes of asking them either to apply to the SIU for work aboard our vessels, or to offer them such employment. Instead, employment is offered to the SIU member by the SIU manpower pool, and, in turn, seaman/ replacements are offered by the manpower pool to ETC.[4]

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[4] Affidavit of Steven M. Nielsen.

In summary and based upon the aforementioned undisputed facts, ETC contends that because it transacts no business in Louisiana, has no contacts whatsoever with Louisiana, did not solicit employees in Louisiana and instead hired through SIU's headquarters in Piney Point, Maryland pursuant to a collective bargaining agreement, it lacks sufficient contacts with Louisiana to support the invocation of personal jurisdiction under the Louisiana long-arm statute.

Plaintiff does not contest any of the facts set forth in the affidavits of ETC's Kendall Chen or Steven Nielsen. There is no dispute that: (1) ETC conducts no business in Louisiana and never has; (2) ETC's vessels have never plied Louisiana waters nor visited Louisiana ports; (3) ETC does not solicit or advertise for business or employees in Louisiana; (4) Ricord was hired pursuant ETC's collective bargaining agreement with SIU at Piney Point, Maryland, the union's national headquarters; (5) the shipping articles executed in Japan by Ricord constitute the contract of his employment with ETC. In short the only contact that ETC has with Louisiana was the fortuitous hiring of plaintiff through the union.

Plaintiff argues, however, that ETC has sufficient contacts with the Louisiana to support this Court's exercise of jurisdiction based on the following: (1) ETC engaged Ricord for employment in New Orleans, Louisiana[5] on fifteen occasions between 1981 and 1991 as shown by ETC's personnel record on

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[5] As the defendant points out in its reply brief, the shipping articles constitute the contract of employment between Ricord (seaman) and the ETC, which were not signed until the Ricord reached the vessel in Japan. In other words, on each occasion plaintiff worked for ETC, he signed the shiping articles in Japan, and thus, was not employed by ETC until he reached Japan.

Ricord; (2) ETC retains a New Orleans physician for examining seaman for claims, who submits bills to the ETC for payment and makes maintenance and cure payments to Louisiana seaman; and (3) ETC employee's paychecks are mailed to Louisiana upon the employee's request. Via supplemental memorandum in opposition plaintiff submits that the fact that ETC was aware that SIU filled positions through SIU's New Orleans hiring hall ETC creates sufficient contacts with Louisiana for this Court to exercise personal jurisdiction.

Plaintiff served the defendant in this case pursuant to the Louisiana long-arm statute, La.Rev.Stat. 13:3201, which provides that "a court of this state may exercise personal jurisdiction over a nonresident on any basis consistent with the constitution of this state or the Constitution of the United States." *Id.*

ANALYSIS

When a challenge is made to the court's *in personam* jurisdiction, the party who seeks to invoke the district court's jurisdiction bears the burden of making a *prima facie* showing of sufficient facts to establish jurisdiction over the nonresident defendant.[6] In determining whether the plaintiff has established a *prima facie* case of personal jurisdiction, uncontroverted allegations in the complaint must be taken as true.[7] Moreover, all conflicts between the facts contained in the parties' affidavits

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[6] *Jones v. Petty-Ray Geophysical Geosource, Inc.*, 954 F.2d 1061, 1067 (5th Cir. 1992); *Bullion v. Gillespie*, 895 F.2d 213, 216-17 (5th Cir. 1990); *WNS, Inc. v. Farrow*, 884 F.2d 200,203 (5th Cir. 1989).

[7] *Bullion*, 895 F.2d at 217; *WNS, Inc.* 884 F.2d at 204.

must be resolved in favor of the plaintiff.[8]

A federal court may exercise jurisdiction over a nonresident defendant provided state law confers such jurisdiction and its exercise comports with due process under the Constitution.[9] Because the Louisiana long-arm statute as amended in 1987 extends to the limits of due process, this Court need only consider whether personal jurisdiction over ETC satisfies federal constitutional requirements.[10]

In *Asahi Metal Industry Co. v. Superior Court of California,* 480 U.S.102, 107 S.Ct. 1026, 1029, 94 L.Ed.2d 92 (1987), the Supreme Court set forth the two-step test for determining whether a nonresident defendant is subject to a district court's jurisdiction, to wit: first, the district court must determine whether the nonresident defendant purposefully established "minimum contacts" with the forum state such that maintenance of suit does not offend traditional notions of fair play and substantial justice; and second, even where minimum contacts exist, the court must consider whether requiring the defendant to litigate in the forum state would be unfair.

A defendant's contacts with a forum may support general or specific jurisdiction. General jurisdiction refers to a suit that does not arise from the nonresident's contact with the forum, and is asserted only over defendants who maintain continuous and

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[8] *Id.*

[9] *Id.*

[10] *Simmons v. SeaTide International, Inc.*, 693 F.Supp. 510, 513 (E.D.La. 1988) (Schwartz,Jr.)

systematic contacts in a particular forum.[11] Specific jurisdiction concerns a suit arising out of or related to a defendant's contacts with the forum state.[12]

Plaintiff argues that defendant's employment/recruitment contacts with Louisiana and that defendant retains a physician in Louisiana are sufficient to subject it to both the general and specific jurisdiction of this court. At the outset the Court notes the undisputed paucity of contacts ETC has with this forum. Considering that plaintiff's injuries do not arise out of or relate to any contact the defendant ETC has had with Louisiana, specific jurisdiction is unavailable to the plaintiff in the captioned matter. It cannot be seriously argued that any relationship ETC had with SIU or that ETC had retained a physician in Louisiana has any bearing on whether ETC was at fault or remiss in connection with the plaintiff's alleged injuries.

Now turning to general jurisdiction, the record reflects that the ETC does not maintain continuous and systematic contacts with this forum. As previously stated, it is undisputed that ETC is incorporated in Delaware and has its principal place of business in New York. It is not registered to do business in Louisiana. It does not transact or solicit business, maintain offices, employ representatives, or advertise in Louisiana and does not have an agent for service of process in Louisiana. On balance, ETC's only contact with Louisiana is that it notified SIU, which utilizes its Louisiana hiring hall among others to fill

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[11] *Helicopteros Nacionales De Colombia, S.A. v. Hall,* 466 U.S. 408, 415, 104 S.Ct. 1868, 1872, 80 L.Ed.2d 404 (1984).

[12] 104 S.Ct. at 1872 n.8.

positions, that it had a job.

The Court considers it wholly irrelevant that: (1) ETC's attorney's have engaged physicians in Louisiana to examine Louisiana seaman who have asserted claims against the company; (2) Ricord chose to instruct ETC to send his paychecks to his Louisiana residence; and (3) plaintiff's crew information card incorrectly reflects his "port of engagement" as New Orleans.

Notwithstanding the foregoing determination that ETC lacks sufficient contacts with this state, the Court addresses the second prong of the test, i.e., the reasonableness of asserting jurisdiction over ETC. The Supreme Court in *Asahi,* supra, has listed several factors that must be considered in the reasonableness equation.[13]

A court must consider the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief. It must also weigh in its determination "the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies."[14]

Thus, only if this Court has specific jurisdiction over ETC, which it does not, will it have personal jurisdiction over ETC. The contacts cited by plaintiff in the case at bar which have been reiterated herein above simply do not support an inference that the ETC purposefully availed itself of the benefits of the forum state. The defendant's contacts must be deliberate, rather than fortuitous, so that the need to invoke the benefits and

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[13] *Asahi,* 107 S.Ct. 1026 (1987).

[14] *Id.* at 1033.

protection of the forum's laws was reasonable and foreseeable.

The complete absence of purposeful contact with the state of Louisiana by ETC leads to no other conclusion than that it would offend the traditional notions of fair play to require it to defend the instant lawsuit in this forum. Thus, this Court lacks personal jurisdiction over ETC.[15] Accordingly, and for all of the above and foregoing reasons,

IT IS ORDERED that the defendant's motion to dismiss is hereby GRANTED and the plaintiff's claims against it are hereby DISMISSED WITHOUT PREJUDICE.

The Clerk of Court is directed to enter judgment in accordance herewith.

New Orleans, Louisiana, this 2nd day of November, 1993.

[s]_____
UNITED STATES DISTRICT JUDGE

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[15] See *Carter v. Ocean Ships, Inc., C.A.*, No. 90-2132, 1990 LEXIS 11440 (E.D.La.) (Carr, J.) (holding that a Louisiana plaintiff who was hired by the vessel owner through the SIU's Manpower Coordinator in Maryland and who was injured in international waters could not invoke a Louisiana court's jurisdiction over his employer who had no contacts with Louisiana other than the fortuitous hiring of the plaintiff through the union hall); and *Jones v. Maritime Overseas Corp.*, No. 91-3266, 1992 LEXIS 1887 (E.D.La.) (Sear, J.) (holding that in the absence of systematic and continuous contacts, only if the court has specific jurisdiction will it also have personal jurisdiction and where the nonresident defendant's only contact with Louisiana is that it notified SIU that it had a job, it was not reasonable to subject it to a suit in this state since it would offend traditional notions of fair play and substantial justice).

FILED: JUNE 16, 1994

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3798
Summary Calendar

FABIOUS M. RICORD,
(Succession of Fabious M. Ricord, Jr.,
substituted as plaintiff in place of
Fabious M. Ricord, Jr.)

Plaintiff-Appellant,

versus

ENERGY TRANSPORTATION COMPANY,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana

ON PETITION FOR REHEARING
(June 16, 1994)

Before REAVLEY, HIGGINBOTHAM and EMILIO M. GARZA, Circuit Judges.

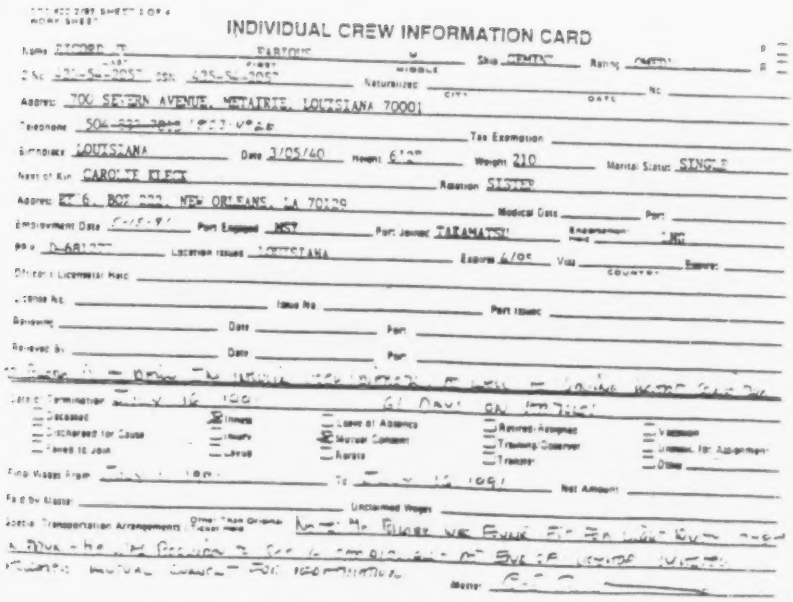
PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

[s]_____

United States Circuit Judge



INDIVIDUAL CREW INFORMATION CARD

Name [illegible] FIRST [illegible] MIDDLE Ship [illegible] Rating [illegible]

SS# [illegible] DSS [illegible] Naturalized CITY DATE No.

Address 700 SEVERN AVENUE, METAIRIE, LOUISIANA 70001

Telephone [illegible] Tax Exemption

Birthplace LOUISIANA Date 2/05/40 Height 6'2" Weight 210 Marital Status SINGLE

Next of Kin CAROLE KLECK Relation SISTER

Address [illegible] Medical Date Port

Employment Date [illegible] Port Engaged MSY Port Joined TARAHATSU Endorsement

Pass [illegible] Location Issued LOUISIANA Expires 4/05 Visa COUNTRY Expires

Officer's Licensed Held

License No. Issue No. Port Issued

Surrendered Date Port

Received By Date Port

[illegible]

Date of Termination [illegible] 6/ Days On Ship

- Deceased
- Discharged for Cause
- Failed to Join
- [illegible]
- [illegible]
- [illegible]
- Leave of Absence
- Mutual Consent
- Retired
- Retired-Assigned
- Training Observer
- Transfer
- Vacation
- Unassd. for Assignment
- Other

Final Wages From [illegible] To [illegible] Net Amount

Paid by Master Unclaimed Wages

Agents Transportation Arrangements [illegible]

[illegible]

Remarks [illegible]

Master [illegible]

000052

Plaintiff's Exhibit
"A" 12/4/00

ETC #23 2/95 SHEET 3 OF 4
WORK SHEET

INDIVIDUAL CREW INFORMATION CARD

P
R

Name RICORD IV (LAST) FABIOUS (FIRST) M (MIDDLE) Ship LYRRA Rating QMED1

S No 435-56-2057 SSN 435-56-2057 Naturalized (CITY) (DATE) No

Address 700 SEVERN AVENUE, METAIRIE, LOUISIANA 70001

Telephone 504-833-7813 / 833-4926 Tax Exemption

Birthplace LOUISIANA Date 3/05/60 Height 6'2" Weight 210 Marital Status SINGLE

Next of Kin CAROLYE KLECK Relation SISTER

Address RT#6, BOX 222, NEW ORLEANS, LOUISIANA 70129 Medical Date Port

Employment Date 11-5-92 Port Signed NEW ORLEANS, LA Port Joined OSAKA Engagement Held I.NO.

PP # D-681277 Location Issued LOUISIANA Expires 4/95 Visa (COUNTRY) Expires

Officer's Licenses Held

License No Issue No. Port Issued

Approving Date Port

Reviewed By [illegible] Date 7/10/91 Port TOKYO

Date of Termination 10 months

- [ ] Deceased
- [ ] Discharged for Cause
- [ ] Failed to Join
- [ ] Illness
- [ ] Injury
- [ ] Layoff
- [ ] Leave of Absence
- [ ] Mutual Consent
- [ ] Rotary
- [ ] Retired/Resigned
- [ ] Training/Observer
- [ ] Transfer
- [X] Vacation
- [ ] Unavail. for Assignment
- [ ] Other

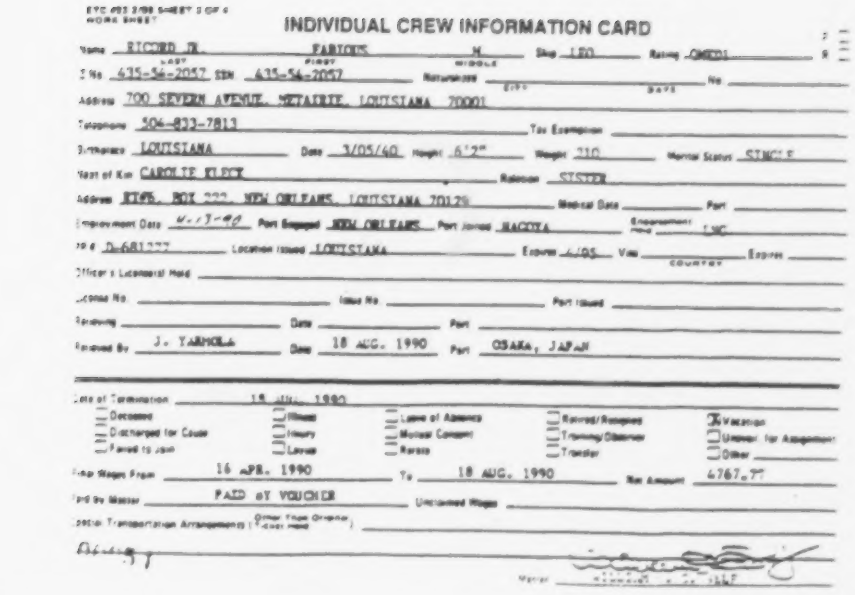
Log Wages From To Net Amount

Paid By Master Unclaimed Wages

Special Transportation Arrangements (Other Than Ordinary) (You can mark more than one)

00053

Master



INDIVIDUAL CREW INFORMATION CARD

Name RICORD JR. (LAST) FABIONS (FIRST) M (MIDDLE) Ship LEO Rating QMED1

SS No 435-56-2057 SSN 435-56-2057 Nationality (CITY) (STATE) No

Address 700 SEVERN AVENUE, METAIRIE, LOUISIANA 70001

Telephone 504-833-7813 Tax Exemption

Birthplace LOUISIANA Date 3/05/40 Height 6'2" Weight 210 Marital Status SINGLE

Next of Kin CAROLIE KLECK Relation SISTER

Address RT#5, BOX 222, NEW ORLEANS, LOUISIANA 70129 Medical Date Port

Employment Date 4-17-90 Port Engaged NEW ORLEANS Port Joined NAGOYA Engagement (How) (Where)

PP # D-681277 Location Issued LOUISIANA Expires 4/95 Visa (COUNTRY) Expires

Officer's Licenses Held

License No Issue No Port Issued

Reviewing Date Port

Reviewed By J. YAMAOKA Date 18 AUG. 1990 Port OSAKA, JAPAN

Date of Termination 18 AUG. 1990

- ☐ Deceased
- ☐ Discharged for Cause
- ☐ Failed to Join
- ☐ Illness
- ☐ Injury
- ☐ Layoff
- ☐ Leave of Absence
- ☐ Mutual Consent
- ☐ Retired
- ☐ Retired/Resigned
- ☐ Training/Observer
- ☐ Transfer
- ☒ Vacation
- ☐ Unsuited for Assignment
- ☐ Other

Final Wages From 16 APR. 1990 To 18 AUG. 1990 Net Amount 4767.77

Paid By Master PAID BY VOUCHER Unclaimed Wages

Special Transportation Arrangements (Other Than Original)

Master

ETC #33 2/95 SHEET 1 OF 1
MORA SHEET

INDIVIDUAL CREW INFORMATION CARD

Name RICORD SR FABIOUS M. Ship GEMINI Rating QMED1 P R

I.D. No 435-54-2057 SSN 435-54-2057 Naturalized _____ No. _____

Address 700 SEVERN AVENUE, METAIRIE, LOUISIANA 70001

Telephone 504-833-7813 Tax Exemption _____

Birthplace LOUISIANA Date 3/05/60 Height 6'2" Weight 210 Marital Status SINGLE

Next of Kin CAROLIE KLECK Relation SISTER

Address RT #6, BOX 222, NEW ORLEANS, LOUISIANA 70129 Medical Date 9-21-89 Port STU.NEW ORLEA

Employment Date 2-24-89 Port Engaged LOUISIANA Port Joined NAGOYA Engagement Rate QMED1-LNG

Rel. D-681277 License Issued LOUISIANA Expires 4/95 Visa _____ Country Expires _____

Officer's Endorsement Held _____

License No _____ Issue No. _____ Port Issued _____

Reshipping _____ Date _____ Port _____

Received By _____ Date 24 NOV 89 Port CS-7A

Date of Termination 24 NOV 89

- ☐ Deceased
- ☐ Discharged for Cause
- ☐ Failure to Join
- ☐ Illness
- ☐ Injury
- ☐ Layoff
- ☐ Leave of Absence
- ☐ Marital Conflict
- ☐ Retire
- ☐ Retired/Resigned
- ☐ Training/Observer
- ☐ Transfer
- ☐ Vacation
- ☐ Unknown for Assignment
- ☐ Other _____

Final Wages From 09-1-89 To 11-24-89 Net Amount _____

Paid by Master _____ Unclaimed Wages _____

Special Transportation Arrangements (Other than Original) _____

Master _____

INDIVIDUAL CREW INFORMATION CARD

Name RICORD (Last) FABIOUS (First) M. (Middle) Ship CAPRICORN Rating OMED1

SS No 435-54-2057 SSN 435-54-2057 Naturalized (City) (Date) No

Address 700 SEVERN AVENUE METAIRIE LOUISIANA 70001

Telephone 504-833-7813 Tax Exemption

Birthplace LOUISIANA Date 3/5/40 Height 6'2" Weight 210 Marital Status SINGLE

Next of Kin CAROLIE KLECK Relation SISTER

Address RT 96 BOX 222 N.O. LOUISIANA 70129 Medical Date * 2-- 89 Port SIU-N.O.

Employment Date *-?-89 Port Engaged NEW ORLEANS, LA Port Joined SAKAIDE Engagement OMED-LNG

Reg D-681277 Location Issued NEW ORLEANS, LOUISIANA Expires 4/95 Visa (Country) Expires

Officer's Licenses/Held

License No Issue No Port Issued

Rating Recrew Date 9 Oct. 88 Port Sakaide

Signed By J. Carroll Date 2? Feb. 89 Port Nagoya

Repatriated from Plane Lacrosse *0 February *0Ac

Date of Termination *0 Feb. 89

- Deceased
- Discharged for Cause
- Failed to Join
- Illness
- Injury
- Leave
- Leave of Absence
- Mutual Consent
- Nurse
- Retired/Resigned
- Training/Observer
- Transfer
- Vacation
- Unused for Assignment
- Other

Total Wages From To Net Amount

USPHS Master Unclaimed Wages

Special Transportation Arrangements (Other Than Original)

Master

INDIVIDUAL CREW INFORMATION CARD

RICORD FABIOUS M. Ship ARIES Rating OMED 1

425-54-2057 SSN 435-54-2057 Naturalized ___ ___ No ___

700 SEVERN AVE. METAIRIE. LA. ~~70009~~ 70001

504-833-7813 ~~737-3080~~ Tax Exemption ___

N.O. LOUISIANA Date 3/5/40 Height 6'2" Weight 210 Marital Status SINGLE

CAROLIE KLECK Relation SISTER

RT. 6 BOX ~~225~~ NO., LA. 70129 Medical Date ___ Port SIU-NO.

Agreement Date 6-12-88 Port Engaged N.O. Port Joined NAGASAKI Endorsements OMED-LNG

D- 681277 Location Issued N.O. Expires 4/06 95 Visa ___ Country Expires ___

Other Licenses/Id Held ___

SS No ___ Issue No ___ Port Issued ___

Shipping ___ Date ___ Port ___

Discharged By ___ Date 21 JUN 89 Port NAGASAKI

Date of Termination 21 JUN 89

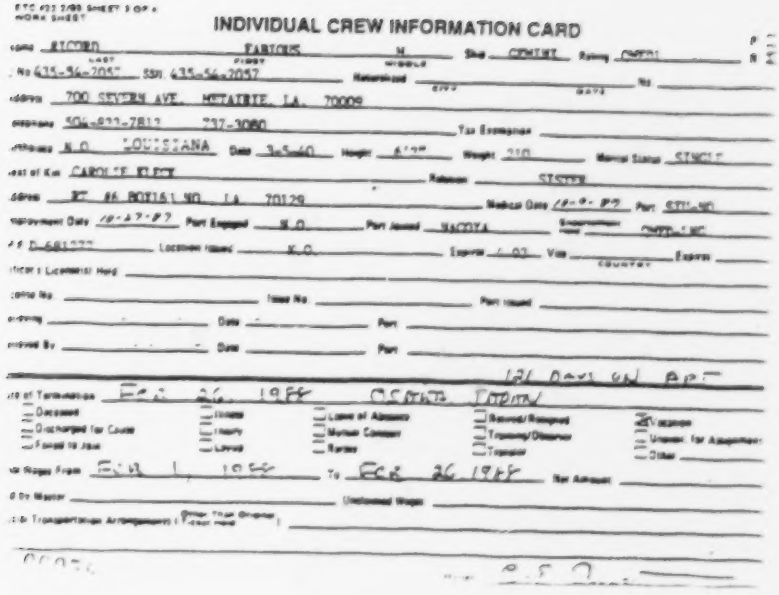
- [X] Deceased
- [ ] Discharged for Cause
- [ ] Failed to Join
- [ ] Illness
- [ ] Injury
- [ ] Leave
- [ ] Leave of Absence
- [ ] Mutual Consent
- [ ] Retire
- [ ] Reprimand/Reassigned
- [ ] Training/Observer
- [ ] Transfer
- [ ] Vacation
- [ ] Unfitness for Assignment
- [ ] Other ___

Wages From ___ To ___ Net Amount 6x ETC 4/YIC

Allotment ___ Unclaimed Wages ___

Transportation Arrangements (Travel Voucher Issued) ___

Master ___



INDIVIDUAL CREW INFORMATION CARD

Name RICORD (Last) FABIAN (First) M (Middle) Ship CENTAR Rating CHIEF

No 435-56-7057 SSN 435-56-7057 Nationality (City) (State) Dob (Date) No

Address 700 SEVERN AVE. METAIRIE, LA. 70009

Telephone 504-831-7812 237-3080 Tax Exemptions

Birthplace N.O. LOUISIANA Date 3-5-40 Height 6'2" Weight 210 Marital Status SINGLE

Next of Kin CAROLE RICORD Relation SISTER

Address 37 66 BOYLAND LN. LA. 70129 Medical Date 10-9-87 Port STL-MO

Employment Date 10-27-87 Port Engaged N.O. Port Issued NAGOYA Engagement Type CHIEF ENG

Z Card D-681577 Location Issued N.O. Expires /-93 Visa (Country) Expires

Officer's Licenses(s) Held

License No Issue No Port Issued

Endorsed Date Port

Entered By Date Port

121 DAYS ON APT

Date of Termination FEB 26, 1988 CONTR TERMN

☐ Deceased ☐ Illness ☐ Leave of Absence ☐ Retired/Resigned ☒ Vacation

☐ Discharged for Cause ☐ Injury ☐ Mutual Consent ☐ Tyranny/Distance ☐ Unsatis. for Assignment

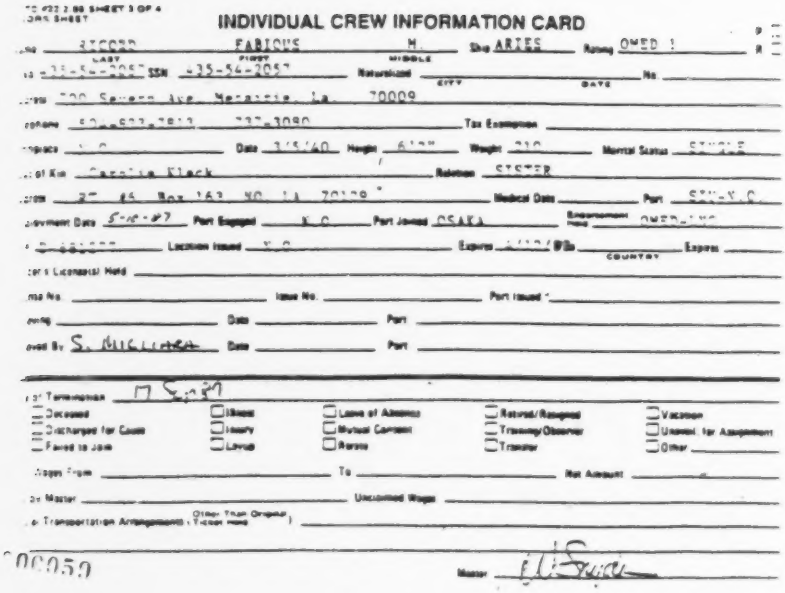
☐ Failed to Join ☐ Layoff ☐ Rating ☐ Transfer ☐ Other

Vacation Wages From FEB 1, 1988 To FEB 26 1988 Tax Amount

Draw By Master Undeclared Wages

Info Transportation Arrangements (Prior Year Original Card Held)

DRAW: $ 0.00



INDIVIDUAL CREW INFORMATION CARD

[illegible] FABIOUS M. Ship ARIES Rating OMED I

[illegible] SSN -35-54-2057 Naturalized [illegible] No [illegible]

[illegible] 700 Severn Ave. Metairie, La. 70009

[illegible] Tax Exemption [illegible]

[illegible] Date 3/5/60 Height 6'2" Weight 210 Marital Status SINGLE

[illegible] Relation SISTER

[illegible] Medical Date [illegible] Port SFNO.C.

Employment Date 5-16-87 Port Engaged N.O. Port Joined OSAKA Employment Note OMED-IMO

[illegible] Location Issued N.O. Expires [illegible] Endorsements [illegible] Expires [illegible]

[illegible] Licenses) Held [illegible]

[illegible] No. [illegible] Issue No. [illegible] Port Issued [illegible]

[illegible] Date [illegible] Port [illegible]

Issued By S. MIGLIACCI Date [illegible] Port [illegible]

[illegible] Termination 17 Sept 87

- ☐ Deceased
- ☐ Discharged for Cause
- ☐ Failed to Join
- ☐ Illness
- ☐ Injury
- ☐ Layoff
- ☐ Leave of Absence
- ☐ Mutual Consent
- ☐ Reason
- ☐ Retired/Resigned
- ☐ Training/Observer
- ☐ Transfer
- ☐ Vacation
- ☐ Unsatisf. for Assignment
- ☐ Other

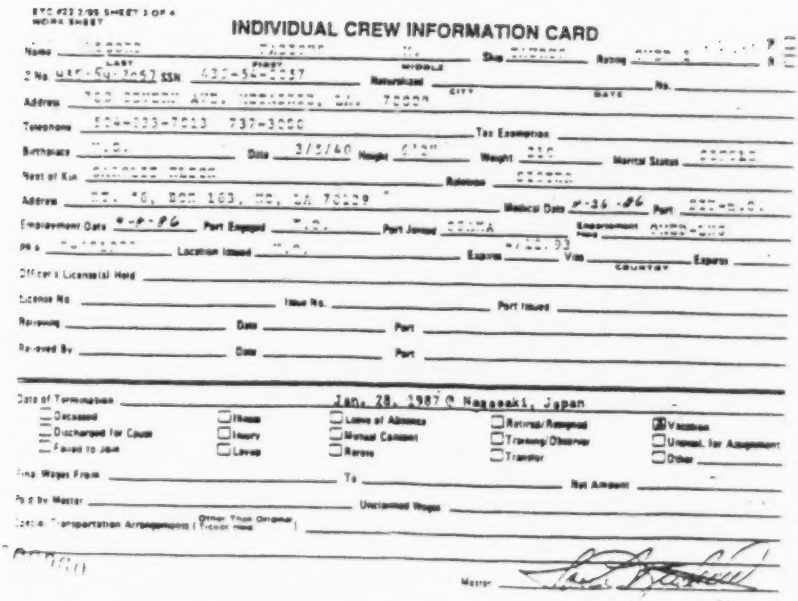
Wages From [illegible] To [illegible] Net Amount [illegible]

[illegible] Master [illegible] Unclaimed Wages [illegible]

[illegible] Transportation Arrangements (Other Than Original) (Return Home) [illegible]

000059

Master [signature]



STC 423 2/95 SHEET 3 OF 4
WORK SHEET

INDIVIDUAL CREW INFORMATION CARD

Name _____ (LAST) _____ (FIRST) _____ (MIDDLE) Ship _____ Rating _____

2 No. [illegible] SSN 433-54-3257 Reinstated _____ (CITY) _____ (DATE) No. _____

Address [illegible] Metairie, LA 70003

Telephone 504-833-7013 737-3000 Tax Exemptions _____

Birthplace U.S. Date 3/3/60 Height 6'10" Weight 310 Marital Status [illegible]

Next of Kin [illegible] Address [illegible]

Address OPT, PO, Box 103, MC, LA 70129 Medical Date 9-26-86 Port [illegible]

Employment Date 9-8-86 Port Engaged [illegible] Port Joined [illegible] Endorsement [illegible]

PP # [illegible] Location Issued U.S. Expires 8-30-93 Visa _____ (COUNTRY) Expires _____

Officer's License(s) Held _____

License No. _____ Issue No. _____ Port Issued _____

Renewed _____ Date _____ Port _____

Revoked By _____ Date _____ Port _____

Date of Termination Jan. 28, 1987 @ Nagasaki, Japan

- ☐ Deceased
- ☐ Discharged for Cause
- ☐ Failed to Join
- ☐ Illness
- ☐ Injury
- ☐ Leave
- ☐ Leave of Absence
- ☐ Mutual Consent
- ☐ Resns
- ☐ Retired/Resigned
- ☐ Training/Observer
- ☐ Transfer
- ☒ Vacation
- ☐ Unsatisf. for Assignment
- ☐ Other _____

Final Wages From _____ To _____ Net Amount _____

Paid By Master _____ Unclaimed Wages _____

Special Transportation Arrangements (Other Than Original Travel Plan) _____

Master _____

INDIVIDUAL CREW INFORMATION FORM

Name RICORD (Last) FABIOUS (First) H (Middle) LNG TAURUS Voy

Rating OMED Perm / Rel Rel. Z Number 435-54-2057 S S Number same

Address 700 Severn Ave., Metairie, LA 70005

Tel No (504) 833-7813/737-3080

Birthplace N.O. Date 3/5/40 Height 6'2" Weight 220 Exams S-0

Naturalized Number Marital Status Single

Next of Kin - Name Carolie Kleck Relation Sister

Address Rt. #6, Box 163, NO, LA 70129

Date of Employment 1/27/95 Port Engaged N.O. Port Joined Nagasaki

Medical - Date 1/4/95 Port STUPLO. Examination Class OMED - LIC

OFFICERS ONLY - License held License Number Issue Number

Relieved J. Yacopis Date Port

Relieved by PAUL R. WOLF QMED Date 5/28/95 Port TOKAI, JAPAN

PP #0-681277, issued 4/03/92, N.O., expires 4/02/97 No Japanese visa.

Date of Termination 5/28/95 Port TOKAI Type of Discharge GRADUATED

- ☐ Mutual Consent
- ☐ Discharged for cause
- ☒ Vacation
- ☐ Leave of Absence
- ☐ Illness
- ☐ Injury
- ☐ Layoff
- ☐ Removed by Union
- ☐ _____

Final Wages From _____ To _____ Net Amount $ _____

Paid by Master _____ Unclaimed Wages _____

Transportation - Paid by master _____ Travel Wages _____ Dues _____

Subsistance

Master Alan F. Brant

INDIVIDUAL CREW INFORMATION FORM

Name RICORD FABIOUS M LNG VIRGO Voy

Rating OMED Perm /Rel BEL Z Number 435-54-2057 S.S. Number same

Address 720 Severn ave Metairie La. 70009

Tel No 504-833-7813 or 737-3980

Birthplace N.O. Date 3/5/40 Height 6' 2" Weight 210 Eyes S-C

Naturalized Number Marital Status SINGLE

Next of Kin - Name CAROLIE KLECK Relation SISTER

Address RTE 6 Box 163 N.O. La. 70129

Date of Employment 7/15/84 Port Engaged N.O. Port Joined MTMF.IT

Medical - Date 7/3/84 Port SIU-N.O. Classification OMED-LNG

OFFICERS ONLY - License held License Number Issue Number

Relieved W.davidson Date 7/17/84 Port Transfer from Libra

Relieved by W. J. Joe Date 11/12/84 Port Nagoya, Japan

PPR C-681277 issued 4/13/83 at N.O. expires 4/13/93 No tax visa

Date of Termination 12 November 1984 Port Nagoya Type of Articles Foreign

☑ Mutual Consent ☐ Discharged for cause ☐ Vacation

☐ Leave of Absence ☐ Illness ☐ Injury

☐ Layup ☐ Removed by Union ☐

Final Wages From 22 July 1984 To 12 November 1984 Net Amount $

Paid by Master None Unclaimed Wages None

Transportation - Paid by [redacted] Subsistance Zoo NYK Travel Wages None Opers

[redacted] Agent for Waterman

08062

INDIVIDUAL CREW INFORMATION FORM

Name RICCARD FABIUS M. LNG GERMAN Voy

Rating OMC Perm / Rel RF Z Number 433-34-7057 S.S. Number 3306 Same

Address 700 Severn Avenue, Metairie, La. 70009

Tel No 504-468-2772

Birthplace N.O. Date 3/5/40 Height 6'2" Weight 210 Exams 5-0

Naturalized Number Marital Status Single

Next of Kin - Name Carolie Klock Relation Sister

Address Rue A, Box 143, N.O., La. 70179

Date of Employment 12/18/83 Port Engaged N.O. Port Joined Miami

Medical - Date 12/7/83 Port S.F. N.O. Passport Held OMC INC

OFFICERS ONLY - License held License Number Issue Date

Relieved G. Lindsay Date Port

Relieved by Date Port

DC #0-681777 issued 3/27/67 at N.O. No Tax Visa

Date of Termination May 7, 1984 Port Tampa Type of Articles FOREIGN

- [X] Mutual Consent
- [ ] Discharged for cause
- [X] Vacation
- [ ] Leave of Absence
- [ ] Illness
- [ ] Injury
- [ ] Layoff 12/18/84
- [ ] Removed by Union
- [ ]

Final Wages From May 1, 1984 To May 7, 1984 Net Amount $

Paid by Master Unclaimed Wages

Transportation - Paid by master Travel Wages Dates

Subsistance 137 Days Rec 5/1/84

0063...

INDIVIDUAL CREW INFORMATION FORM

Name RICCORD (Last) FABIUS (First) H. (Middle) LNG TAURUS Voy

Rating QUEP AB Perm / Rel Rel I Number 435-54-2057 S.S. Number same

Address 3404 Arkansas St., Kenner, La. 70062

Tel. No 504-468-2771

Birthplace N.O. Date 3/5/40 Height 6'2" Weight 210 Exemp S-0

Naturalized Number Marital Status Single

Next of Kin - Name Carolie Kleck Relation Sister

Address Rye A. Box 163, N.O., La. ,70179

Date of Employment 4/22/83 Port Engaged N.O. Port Joined Osaka

Medical - Date 4/22/83 Port N.O. Examiner's Name QUEP LNG

OFFICERS ONLY - License held License Number Issue Number

Relieved D. Brass Date Port

Relieved by L. Gordon Date 8/27/83 Port Foreign

ID 6D681777 issued 4/22/83 at N.O. No Tax Withheld

Date of Termination 8/27/83 Port Osaka Type of Service Foreign

☐ Mutual Consent ☐ Discharged for cause ☒ Vacation

☐ Leave of Absence ☐ Illness ☐ Injury

☐ Layup ☐ Removed by Union ☐ _____

Final Wages From 4/22/83 To 8/27/83 Net Amount $ _____

Paid by Master _____ Unclaimed Wages _____

Transportation - Paid by master _____ Travel Wages _____ Dates _____

Subsistance

9086T _____ Master _____

INDIVIDUAL CREW INFORMATION FORM

Name RICCORD (LAST) FABIOUS (FIRST) M. (MIDDLE) LNG AQUARIUS Voy

Rating CHIEF #1 Perm /Rel Sal Z Number same SS Number 435-[illegible]-2057

Address 3404 Arkansas St., Kenner, La. 70062

Tel. No 504-466-2771 (Dav-Brother's Store; 504-737-3080)

Birthplace N.O. Date 3/15/40 Height 6'3" Weight 210 Exams 5-0

Naturalized Number Marital Status Single

Next of Kin - Name Carolie Black Relation Sister

Address Rte 6 Box 163C N.O. La. 70129

Date of Employment 9/9/87 Port Signed N.O. Port Joined Nagoya

Medical - Date 8/27/87 Port STI Clinic-N.O. Expirations Date CHIEF ENG

OFFICERS ONLY - License held License Number Issue Number

Relieved G. Lindsay Date Port

Relieved by L. Tanner Date 28 Jan 1988 Port Nagoya

pp #C214663 issued 9/2/87-87 in N.O. No Jap. Visa

Date of Termination 28 Jan 1988 Port Nagoya Type of Articles FOR-N

☑ Mutual Consent ☐ Discharged for cause - ☑ Vacation

☐ Leave of Absence ☐ Illness ☐ Injury

☐ Layup ☐ Removed by Union ☐

Final Wages From 4/6/88 To 1/21/88 Net Amount $

Paid by Master Unclaimed Wages

Transportation - Paid by master Travel Wages Days

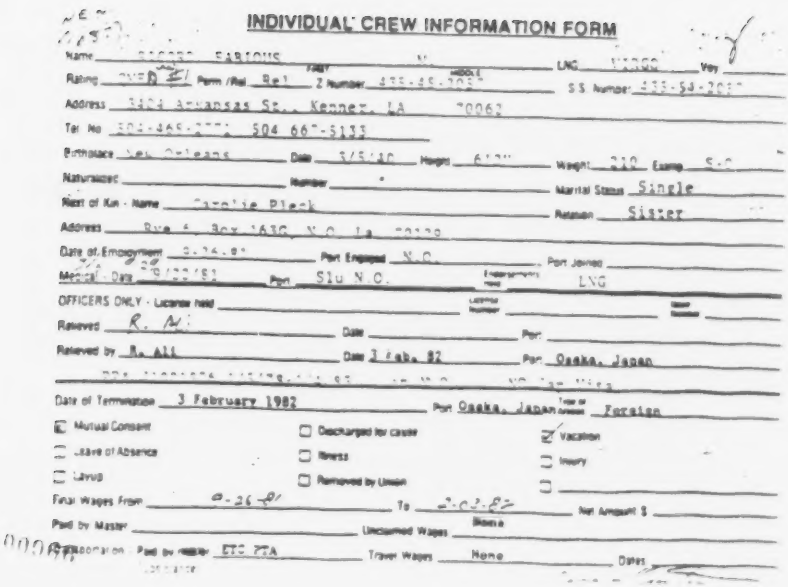
Subsistance

MASTER

00065

STC 22

FORWARD TO N.Y. (ON TERMINATION OF SEAMAN)



INDIVIDUAL CREW INFORMATION FORM

Name [redacted] FABIOUS M LNG [redacted] Voy

Rating OWED Perm /Rel Rel Z Number [redacted] SS Number [redacted]

Address 3424 Arkansas St., Kenner, LA 70062

Tel No 504-466-2771, 504 467-5133

Birthplace New Orleans Date 3/5/40 Height 6'2" Weight 210 Exemp S-0

Naturalized Number Marital Status Single

Next of Kin - Name Caroline Plack Relation Sister

Address Rte 4 Box 163C, N.O. La 70129

Date of Employment 3.14.81 Port Engaged N.O. Port Joined

Medical Date 8/22/81 Port Slu N.O. Engagement Term LNG

OFFICERS ONLY - License held License Number Issue Number

Relieved R. M. Date Port

Relieved by R. Ali Date 3 Feb. 82 Port Osaka, Japan

Date of Termination 3 February 1982 Port Osaka, Japan Type of Discharge Foreign

☑ Mutual Consent ☐ Discharged for cause ☑ Vacation

☐ Leave of Absence ☐ Illness ☐ Injury

☐ Layoff ☐ Removed by Union ☐

Final Wages From 2-26-81 To 2-03-82 Net Amount $

Paid by Master Unclaimed Wages Bonus

Transportation Paid by ETC FTA Travel Wages None Dates

AFFIDAVIT OF CARL PETH

STATE OF MARYLAND)
COUNTY OF ST. MARY'S)

BEFORE ME, the undersigned authority in and for said County and state, personally came and appeared CARL PETH, who deposes and says as follows:

1. I am the Director of the Manpower Office of the Seafarers International Union, Atlantic, Gulf, Lakes and Inland Waters District ("Union" or "SIU"). This office is located in Piney Point, Maryland.

2. The Manpower Office is responsible for dispatching job orders for positions on board SIU-contracted vessels to Union-affiliated hiring halls located in port cities throughout the United States, including a hiring hall in New Orleans, Louisiana.

3. During the past five years, Energy Transportation Corporation (ETC) had a collective bargaining agreement with the SIU. Pursuant to this agreement, ETC filled positions on board its vessels through the Manpower Office.

4. During the past five years, the SIU has filled jobs on board ETC vessels at its hiring hall in New Orleans, Louisiana.

[s]_____
Carl Peth

SWORN to before me this 28th day of October, 1993.

[s] Sharon L. Farr
Notary Public

My commission expires: 11/1/96

STATE OF NEW YORK
COUNTY OF NEW YORK

BEFORE ME, the undersigned authority personally came and appeared:

STEVEN M. NIELSEN

who, after being duly sworn, did depose and state as follows:

(1) I have personal knowledge of the matters contained herein and am competent to testify thereto.

(2) I am the personnel manager of Energy Transportation Corporation ("ETC") and in that capacity have previously submitted an affidavit of this matter, the contents of which are adopted herein as if the same were copied in extenso.

(3) As explained in my initial affidavit, ETC obtains unlicensed personnel such as Fabious M. Ricord, Jr. to crew its ships by referral from the "manpower pool" at Piney Point, Maryland. ETC is obligated by contract with the SIU to obtain its unrated seaman through the SIU and ETC always does so through this "manpower pool." ETC does not hire seamen through the SIU Hall in New Orleans, Louisiana and, specifically, did not hire Fabious M. Ricord, Jr. through the SIU Hall in New Orleans, Louisiana.

(4) An unrated seaman such as Fabious M. Ricord, Jr. does not become employed by ETC until the seaman signs shipping articles which constitutes a contract of employment between the seaman and ETC. Shipping articles are not signed until the seaman reaches the particular ETC vessel aboard which

he is to serve at the port in Japan where the seaman meets the vessel.

(5) On each occasion on which Fabious M. Ricord, Jr. was employed by ETC he did not become employed until he signed shipping articles and this was always done at the port in Japan where he met the ETC vessel.

(6) The "port of engagement" to which the Individual Crew Information Form refers is simply the location in the United States from which the seaman departs for Japan. The seaman is not "engaged" for employment at this American location. He only becomes employed by ETC upon reaching the ETC vessel in Japan and signing shipping articles. ETC accordingly did not hire Ricord in Louisiana.

(7) ETC does not regularly "retain" a physician for examining seamen. Rather, when a seaman who happens to live in Louisiana submits a claim for cure benefits, ETC, through its attorneys, may have the seaman examined by a New Orleans physician. This is done strictly as a convenience to the seaman.

[s]_____
STEVEN M. NIELSON

SWORN AND SUBSCRIBED BEFORE ME, THIS 15TH DAY OF OCTOBER, 1993.

[s] Jessica Morelli
NOTARY PUBLIC, My commission expires
at October 31, 1993

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FABIOUS M. RICORD, JR.,
Plaintiff, Civil Action No. 92-3797

-against-

ENERGY
TRANSPORTATION CORPORATION, AFFIDAVIT SECTION "A"
Defendant.

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

BEFORE ME the undersigned authority, personally came and appeared:

STEVEN M. NIELSEN who, after being duly sworn, did depose and state as follows:

1. I have personal knowledge of the matters contained herein and am competent to testify thereto.

2. I am the Personnel Manager of Energy Transportation Corporation ("ETC"). I have been so employed since April, 1984. Since that time, my office has been in the offices of ETC in New York City, which, during the time of my employment, have always been in New York City. I replaced Mr. Joseph Caiola, who was Marine Personnel Manager until leaving ETC's employment in March, 1984, a fact represented to me to be true by the ETC personnel department based on non-marine personnel company records. At the time I began employment with ETC,

Phillip Lameck was also employed by the company in a personnel/claim handling capacity. Mr. Lameck died very suddenly soon after I became employed, his last day of employment having been July 13, 1984, again a fact reported to me by the ETC non- marine personnel department.

3. Since April, 1984, I have been very frequently involved with the Seafarer's International Union (("SIU")with respect to hiring replacement unlicensed personnel on the eight ETC vessels, each one of which trades exclusively between Indonesia and Japan. ETC has a collective bargaining agreement with the SIU, by virtue of which the SIU supplies all unlicensed ratings, i.e., crew members who, like plaintiff, are not ship's offices. The agreement in force in February, 1989, when Mr. Ricord was hired to work as an unlicensed member of the crew of ETC's LNG CAPRICORN and LNG-LEO, in Article III Employment, Section 1 Hirings, provides in subsection (a) that: "[t]he Union agrees to furnish the company with qualified, physically fit Unlicensed Personnel having the required ratings, when and where they are required by the Company [ETC]." This subsection also provides that ETC can employ seamen directly" ...if the Union is unable to furnish such personnel." Since April, 1984, this, to my knowledge, has never occurred. The collective bargaining agreement, in Section 3 of Article III, provides for the company's "Rejection of Employment" of a particular seaman. Copies of the face page and referred to as part of Article III of the ETD/SIU Collective Bargaining Agreement covering the July 1, 1985 - June 15, 1987 period are annexed hereto as Exhibit "A."

4. Unlicensed personnel aboard ETC ships serve in the ordinary case for four months whereupon they are relieved. The crew's tours of duty are, of course, staggered to avoid a situation where more than a few crew members are replaced at any one time. The eight vessels maintain a quite close schedule and, as a result, certain crew members aboard a particular ship are

repatriated at a port in Japan on each occasion that ship returns to that country. The upshot of all this is that the SIU has typically a full month to supply replacements, this being the approximate period of time from my request to the SIU for replacement to when, in the ordinary course of crew rotation, such scheduled replacements are needed.

5. About 30 days before scheduled replacement in Japan of unlicensed SIU seamen aboard ETC vessels, I call the so-called "manpower pool" at the SIU Piney Point, Maryland, plaintiff's union's national headquarters. At that time, I identify the ratings needed, e.g., two able-bodied seamen, one ordinary seaman and one steward's assistant. I also give the manpower pool the whip's name, the port in Japan where the vessel is expected about a month hence, and the approximate date. The manpower pool at Piney Point, is for all practical purposes a lady whose name is Carol Johnson. It is my understanding that Ms. Johnson calls SIU seamen to solicit their willingness to accept assignment; and that who is called on a particular occasion is a matter of union decision. After, to my understanding, these calls are made, in the usual case less than one week later, Ms. Johnson calls back with name and rating. This was done in this case. Plaintiff, Fabious M. Ricord, Jr. was designated by the union; and ETC did not object to that designation.

6. By union contract, ETC is obliged to provide transportation for SIU seamen from the United States to Japan. Since I was employed by ETC in April, 1984, this was done by ETC's travel agent. Most recently, this travel agent has done business under that name VTS Travel Enterprises, Inc./Woodside. The travel agent's offices are at 880 Third Avenue, New York, New York. VTS Travel arranges transportation for the SIU replacements. It is they, and not ETC Marine Personnel, which contracts the replacement SIU seamen regarding travel to Japan.

7. SIU seamen living in the various states of the United States are, of course, supplied as ETC crew replacements. Accordingly, VTS Travel needs certain personnel information to arrange tickets for various places of departure in the United States. This information is generated by ETC Marine Personnel initially; by telephone contacts between me or my office and the SIU seamen prior to the first occasions the seamen sails for ETC. A special endorsement, or LNG "ticket" is needed to serve on ETC vessels; and frequently the first occasion on which an SIU seaman sails for us is soon after he or she obtains this endorsement after a period of schooling at the SIU's Harry Lundberg School of Seamanship, which is also located in Piney Point. This typically is the first and last direct contact between ETC and SIU unlicensed personnel, who serve on our vessels. To my recollection, I have never spoken to plaintiff Fabious M. Ricord, Jr. Marine Personnel never calls SIU seamen for purposes of asking them either to apply to the SIU for work aboard our vessels, or to offer them such employment. Instead, employment is offered to the SIU member by the SIU manpower pool, and, in turn, seaman/replacements are offered by the manpower pool to ETC.

8. As mentioned, ETC's travel agent VTS arranges transportation for SIU replacement crew members. Prior to being called VTS, this travel agent was called "City Travel" and "Hickory Travel." Since about 1987, I have dealt with Viola Collins at VTS.

[s]_____
STEVEN M. NIELSEN

Sworn to and subscribed before me,
this ____ day of ____, 1993

[s] Kathleen Michetti
NOTARY PUBLIC